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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 747

SAMUEL LUCCHESI AND MILTON BEVANS,
Petitioners,

v.

STATE OF MARYLAND.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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INDEX

Table of Contents

	PAGE
Citations to Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statement of the Case	2
The Raising of the Federal Questions	3
Reasons for Granting the Writ	4
Conclusion	9
Appendix A — Opinion and Judgment Below	1a
Appendix B — Motions Made in the Trial Court	5a

Table of Citations

Cases

Bell v. State, 220 Md. 75, 150 A. 2d 908	5
Butz v. State, 221 Md. 68, 156 A. 2d 423	5
Caminetti v. United States, 242 U.S. 470	7
Gideon v. Wainwright, 372 U.S. 335	7, 8
Gormley v. United States, 167 F. 2d 454	7
Holmgren v. United States, 217 U.S. 509	7
Jordan v. State, 219 Md. 36, 148 A. 2d 292	5
Lucchesi and Bevans v. State, 232 Md. 465, 194 A. 2d 266	1a
Mapp v. Ohio, 367 U.S. 643	7, 8
Phelps v. United States, 252 F. 2d 49	7, 8
Singer v. United States, 278 Fed. 415	5
Watson v. State, 208 Md. 210, 117 A. 2d 549	4
Wolf v. Colorado, 338 U.S. 25	8

Statutes

	PAGE
Annotated Code of Maryland:	
Article 27, Secs. 340-342	1
Constitution of the United States:	
Fourth Amendment	7
Sixth Amendment	7
Fourteenth Amendment	4, 7, 8
United States Code, Title 28:	
Section 1257(3)	2

Miscellaneous

American Jurisprudence:	
Volume 14, Criminal Law, Section 110	5
Maryland Rules of Procedure, 1961 Edition:	
Rule 522(b)	4

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STATE OF MARYLAND.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners, Samuel Lucchesi and Milton Bevans, pray for a writ of certiorari to review a judgment of the Court of Appeals of Maryland which affirmed a judgment of the Circuit Court for Baltimore County convicting petitioners of the crime of Burglary and Larceny (Article 27, Secs. 340-342, Annotated Code of Maryland).

CITATIONS TO OPINION BELOW

The opinion of the Court of Appeals of Maryland (R. 108; Appendix A, *infra*) is reported at 232 Md. 465, 194 A. 2d 266.

JURISDICTION

The judgment and opinion of the Court of Appeals of Maryland (Appendix A, *infra*) was entered and filed on October 14, 1963 (R. 108).

The jurisdiction of this Court is conferred by 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether petitioners were denied due process of law in violation of the due process clause of the Fourteenth Amendment to the United States Constitution because the petitioners were convicted on testimony of a person who the State Court held was not an accomplice when in fact he was an accomplice?

2. Whether petitioners were denied due process of law in violation of the due process clause of the Fourteenth Amendment to the United States Constitution because the petitioners were convicted on the uncorroborated testimony of an accomplice.

STATEMENT OF THE CASE

Sometime between the hours of 2:00 p.m., February 22, 1962 and 10:25 a.m., February 23, 1962, the home of Arthur Korzyn, a coin and stamp collector at 2503 Lightfoot Drive, Baltimore County, Maryland, was broken into and a collection of foreign stamps, Japanese propaganda match box covers and a television set taken therefrom. None of the articles allegedly taken was recovered with the exception of the Japanese propaganda match box covers. The petitioners were arrested in August 1962 after the prior arrest and questioning of Chester L. Jones and Joseph Falice. Both petitioners denied any knowledge of the alleged offenses upon which they were convicted (R. 5).

Chester L. Jones testified at the trial that sometime in the last part of February or the first week of March 1962, the petitioners came to his house and asked his aid in

getting certain information concerning the value of stamps. That subsequently he arrived at the home of Joseph Falice, another prosecuting witness and admitted accomplice, where Jones secured certain Japanese propaganda match box covers and stamps, and that later he sold the match box covers for One Dollar to an employee of a Baltimore City Department Store. Jones was arrested by the police on August 2, 1962 upon suspicion of implication in an alleged burglary of a similar coin collection (R. 5).

Joseph Falice testified that he and the petitioners burglarized the property on Lightfoot Drive and attempted to corroborate the testimony of Jones with respect to being present during the period described by Jones (R. 5). The defendants did not testify (R. 111).

Petitioners appealed to the Court of Appeals of Maryland. In affirming the Circuit Court for Baltimore County, the Court of Appeals held that Chester Jones was not an accomplice (R. 112). The Court of Appeals held Joseph Falice was an admitted accomplice and that the testimony of the other witnesses in the case was sufficiently corroborative to support his testimony as to "at least some of the material points involved" (R. 113).

THE RAISING OF THE FEDERAL QUESTIONS

The foundation for raising the questions in the Court of Appeals was laid by the motions to take the witness Jones' testimony subject to exception (R. 12, 15; Appendix B, *infra*). This motion was immediately overruled by the lower court (R. 12, 15; Appendix B, *infra*). The motion did not assert that the action sought was requested for federal constitutional reasons; however, under Maryland law such an assertion was not necessary to preserve the federal question for consideration on appeal to the Mary-

land Court of Appeals.[1] The opinion of the Court of Appeals listed petitioners' contentions as follows (R. 111; Appendix A, *infra*):

> "The defendants contend that Chester Jones, as well as Joseph Falice, was an accomplice, and that there was no sufficient corroboration of the testimony either of Jones or Falice, or of both of them to sustain the conviction. We hold that Jones was not an accomplice and further that, even if he had been, there was sufficient corroboration."

The court decided each of the listed contentions adversely to the petitioners (R. 111; Appendix A, *infra*).

REASONS FOR GRANTING THE WRIT

1. This case establishes that in Maryland it is lawful to convict people on the testimony of an accomplice which is not corroborated. This kind of procedure is supposed to have been eliminated by the Fourteenth Amendment, which requires the states not to deprive a citizen of life or liberty without due process of the law. One of the defendants, Jones, was the accomplice who testified against the two petitioners. Jones falls within the definition of an "accomplice" as that term is used by the Maryland Courts. The definition is found in *Watson v. State*, 208 Md. 210, is as follows:

> "An accomplice is one who knowingly, voluntarily, and with common interest with the principal offender, participates in the commission of a crime either as a principal or as accessory before the fact. * * * In

[1] Rule 522b., Maryland Rules of Procedure (1961 ed.), provides: "For purposes of reconsideration by the trial court or review on appeal, it is sufficient that a party at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court, and unless requested by the court it shall not be necessary to state the grounds therefor."

> felonies the accessories may be either 'accessories before the fact' or 'accessories after the fact' * * * an accessory after the fact is one who, knowing that a felony has been committed, harbors and protects the felon or renders him any other assistance to elude punishment."

Many recent Maryland cases have held that exclusive possession of recently stolen property constitutes prima facie proof that the possessor is the thief, and not merely a receiver of stolen goods, and casts upon such possessor the burden of giving a reasonable explanation of how it came into his possession. Cases which have so held include *Bell v. State*, 220 Md. 75; *Jordan v. State*, 219 Md. 36; and *Butz v. State*, 221 Md. 68.

2. There is no doubt that Jones was an accomplice of these petitioners as that term is defined in the Federal Courts. The definition is found in the case of *Singer v. United States*, 278 F. 415 at page 419 where the court states:

> "An accomplice is an associate in guilt in the commission of a crime, a participant in the offense as principal or accessory."

Basically the same definition can be found in 14 American Jurisprudence, *Criminal Law*, Sec. 110, as follows:

> "To constitute one an accomplice he must take some part in the crime, perform some act, or owe some duty to the person in danger that makes it incumbent on him to prevent the commission of the crime."

Jones testified that he had known the defendants since 1945 (R. 18). That they came to his home to sell him a stamp album (R. 12). A few days later they returned and asked him to go to the library and get a stamp album. Chester Jones took his wife's library card and obtained the album (R. 14). Jones took the stamp catalog, got into the

defendant, Samuel Lucchesi's automobile and was driven to the home of Joseph Falice (R. 15) an admitted accomplice. While in his home, he saw foreign stamps in plastic envelopes, men's shoe boxes and suitcases (R. 16). While on the premises he was handed a number of Japanese propaganda match box covers and stamps. Jones looked over the stamps to try and estimate their value and assort them. He helped the Petitioners pack the stamps and place them into the trunk of the Petitioner, Lucchesi's automobile to be driven to New York City and to be sold. Jones told the Petitioners that the stamps were worth between Ten and Fifteen Thousand Dollars (R. 17). Chester L. Jones sold the match box covers and stamps to a man who worked at Hutzler Brothers Department Store (R. 19). Jones admits he is also known as Raymond Hood (R. 23), and that he has been convicted at least on four different occasions for burglary and false pretenses (R. 23, 24). He admitted at the time he received the articles that he knew all the stamps on the kitchen table, etc., were stolen (R. 27) and that the articles handed to him were stolen (R. 28). He was not gainfully employed in February and March, 1962 (R. 28). From the time of the burglary to his apprehension on August 2, 1962 (approximately six (6) months), he had not mentioned the burglary to anyone (R. 33). In August, 1962, after being held for six (6) days by the County Police he mentioned the burglary to them (R. 33). He was released from police custody after implicating the Petitioners (R. 34). He didn't r[illegible] all whether the police threatened to charge him with this crime unless he implicated the Petitioners (R. 35).

From the above, it is certainly established beyond a reasonable doubt that Jones was guilty of burglary. By his own admission he knowingly received stolen property and aided and abetted the Petitioners to ascertain the value of

the stolen property. He also helped assort and pack the stamps and load them into an automobile. It is the Petitioners' contention from the above stated facts, that the Petitioners were convicted on the uncorroborated testimony of an accomplice which allowed the State to deprive them of their life and liberty without due process of law.

3. There can be no doubt that a citizen of a State Court has just as much right to due process of the law as a citizen of the United States. Both the Fourth Amendment of the Constitution of the United States and the Fourteenth Amendment guarantee this to both citizens. In the now leading case of *Mapp v. Ohio*, 367 U.S. 643, this honorable court held that a state court can no longer set the standards of the admissibility of illegally seized evidence because this is a denial of a constitutional right. This decision was followed by another leading case of *Gideon v. Wainwright*, 372 U.S. 335, in which it was held that the Sixth Amendment, guaranteeing a defendant the right to counsel in a Federal Court was made obligatory upon the states by the due process clause of the Fourteenth Amendment.

These cases have made it abundantly clear that the State can no longer arbitrarily set the rules of procedure or of evidence when they deny a citizen his constitutional right of due process of the law as guaranteed by the Fourteenth Amendment. Petitioners are not unmindful of the decisions of this honorable court holding that there is no hard and fast rule requiring the corroboration of an accomplice's testimony. *Holmgren v. United States*, 217 U.S. 509; and *Caminetti v. United States*, 242 U.S. 470. This rule has been followed in the Federal Courts up to the present day. *Gormley v. United States*, 167 F. 2d 454; and *Phelps v. United States*, 252 F. 2d 49.

The time is now "ripe" for this honorable court to review its prior decisions dealing with the corroboration of ac-

complice's testimony as it is the duty of courts to be watchful for the constitutional rights of the citizen, and against and stealthy encroachments thereon. In the case of *Wolf v. Colorado*, 338 U.S. 25, decided in 1949, the Honorable Justice Frankfurter put it clearly:

> "The motion that the due process of law guaranteed by the Fourteenth Amendment is shorthand for the first eight amendments of the Constitution and thereby incorporates them has been rejected by this Court again and again, after impressive consideration."

As was stated in *Gideon v. Wainwright, supra:*

> "The right to be heard would be in many cases, of little avail if it did not comprehend the right to be heard by counsel."

The right to be heard by counsel is of no avail to a defendant in a state court if the same state court can deny him due process by convicting him on the uncorroborated testimony of an accomplice. It is interesting to note that the 5th Circuit Court of Appeals in the *Phelps* case, *supra*, stated at p. 52:

> "A skeptical approach to accomplice testimony is a mark of the fair administration of justice."

This honorable court has recently taken two opportunities to reverse itself on prior precedents, *Mapp v. Ohio, supra* and *Gideon v. Wainwright, supra*, in holding that the states have denied due process of law as guaranteed by the Fourteenth Amendment to its citizens.

Petitioners strongly urge this court to once again take the opportunity to reconsider its prior holdings on convictions based upon uncorroborated testimony of an accomplice.

CONCLUSION

Petitioners pray the Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion and Judgment Below

(Filed October 14, 1963)

In the Court of Appeals of Maryland

September Term, 1963

No. 45

Samuel Lucchesi and Milton Bevans,

v.

State of Maryland.

Brune, C.J., Henderson, Prescott, Horney, Marbury, J.J.

Opinion by Horney, J.

Claiming that they were convicted of burglary and larceny on the uncorroborated testimony of accomplices, the defendants, Milton Bevans and Samuel Lucchesi, have appealed from the judgment entered on a general verdict of guilty by the court sitting without a jury.

Sometime between 2:00 p.m. on February 22 and 10:25 a.m. on February 23, 1962, the home of a stamp dealer was broken into and robbed of a stock of foreign and United States postage stamps, some Japanese propaganda match box covers and a portable television. At the time of the burglary, the dealer and his wife were away on a trip. None of the stolen property, with the exception of the match box covers and a few of the stamps, was recovered.

In August of 1962, Chester L. Jones was arrested on another charge and during the ensuing investigation was questioned about the burglary. He gave the police information which led to the arrest of Joseph Falice, who, in admitting that he had helped plan and execute the burglary, implicated the defendants as the other burglars and larceners.

Joseph Falice, the admitted accomplice, was called by the State as a witness and testified to the effect that several days prior to the burglary he and the defendants had attempted to sell a small collection of stamps to the stamp dealer. On the day of the burglary, Falice and the defendants "went out to look at the house" again and "parked across the street" from it. Between 6 and 6:30 o'clock that night they "went back out to the place." The house was then unoccupied. To gain entrance the front door was forced open. The defendants entered the house and took what they wanted while Falice stood at the door as a lookout. The stamps were removed from the premises in four suitcases and a sheet or pillow case and were carried to Falice's house. The next day the defendants brought Chester Jones to the house to appraise the stamps. Some of the stamps and the match box covers were given to Jones and the remainder of the stamps was disposed of in New York. The proceeds from the sale of the stamps were divided equally between Falice and the defendants. Neither Falice nor Jones knew the other prior to their meeting on this occasion.

Chester L. Jones testified to the effect that sometime in late February or early March of 1962, the defendants came to see him and requested him to obtain information concerning the value of stamps. They returned two days later, and Jones, who had some knowledge of stamp values, accompanied the defendants to Falice's house. With the aid of a borrowed stamp catalogue, Jones estimated the stamps to be worth from $10,000 to $15,000. Jones purchased some United States commemoratives for $15 and the money was divided then and there between the defendants and Falice. Jones was also given an envelope containing some foreign

stamps and the match box covers which he sold for $1. At the trial, Jones admitted that he knew the stamps he received were stolen property, but denied he had participated in the burglary or theft.

There was other testimony. The stamp dealer's maid testified that when she came to work on February 23, 1962, she found the front door broken open, the office in disorder and a pillow case missing. Another maid, employed in a home across the street, had jotted down (for another reason) at about 2:00 p.m. on February 22, 1962, the license tag number of an automobile that had parked in front of her employer's home. The tag number was identified to be that of a motor vehicle registered in the name of one of the defendants.

Neither of the defendants testified.

The defendants contend that Chester Jones, as well as Joseph Falice, was an accomplice, and that there was no sufficient corroboration of the testimony either of Jones or Falice, or of both of them, to sustain the conviction. We hold that Jones was not an accomplice and further that, even if he had been, there was sufficient corroboration.

In order for Jones to be an accomplice it was necessary to show that he knowingly, voluntarily and with common interest with the defendants, participated in the commission of the burglary and larceny either as a principal or as an accessory before the fact. *Watson v. State*, 208 Md. 210, 117 A. 2d 549 (1955). See also 2 Wharton, *Criminal Evidence* (12th ed.) Sec. 448, where it is said that "the term 'accomplice' does not include a person who has guilty knowledge * * * or who was even an admitted participant in a related but distinct offense * * *" and that an accomplice is " 'one culpably implicated in, or who unlawfully co-operates, aids, abets or assists [sic] in, the commission of the crime charged.' "

There was no direct evidence that Jones was either a participant or an aider or abettor in the commission of either burglary or larceny. Nor did his acceptance of a part of the stolen property — since he made a reasonable

explanation for having had possession of some of it — give rise to an inference that he was the thief. It may be, since he assisted indirectly in disposing of the stolen property, that he was an accessory after the fact in the crime of grand larceny, but he could not be an accomplice because he did not become connected with that felony until after its commission. *Watson v. State, supra*. See also 14 Am. Jur., *Criminal Law*, Sec. 112. Jones frankly admitted that he was a receiver of stolen property, but a majority of courts in other jurisdictions adhere to the principle that the receiver of stolen property is not an accomplice of the thief, so as to require corroboration in a prosecution of one accused of larceny. See Annot. 111 A.L.R. 1398 and Annot. 53 A.L.R. 2d 817 and the cases cited therein. Cf. *Polansky v. State*, 205 Md. 362, 109 A. 2d 52 (1954), wherein it is indicated that the thief is not an accomplice of a receiver.

But even if it is assumed for the purposes of this case that Jones was also an accomplice and that his testimony would not be legally sufficient to corroborate the testimony of the admitted accomplice Falice, it is clear that the testimony of the other witnesses in the case was sufficiently corroborative to support the testimony of Falice, (and to a lesser extent that of Jones) as to "at least some of the material points involved tending to show the guilt" of the defendants. That is all that was required. See *McDowell v. State*, 231 Md. 205, 189 A. 2d 611 (1963), and the cases cited therein.

The testimony of the neighbor's maid that she had jotted down the tag number which led to the identification of the automobile of one of the defendants supported the testimony of Falice that he and the defendants had parked across the street from the stamp dealer's home in the afternoon before the night of the burglary. The testimony of the stamp dealer's maid that the front door was damaged and that a pillow case was missing supported the testimony of Falice that the door had been forced open and that some of the stamps were carried away in a sheet or pillow case. And the testimony of the stamp dealer that his stock of

stamps was worth approximately $15,000 supported the testimony of Jones that he estimated the value of the stamps to be between $10,000 and $15,000. There was sufficient corroboration to justify conviction of the defendants.

The judgment must therefore be affirmed.

Since the State printed in the appendix to its brief the omitted testimony the defendants should have included in the record extract, the motion to dismiss will be denied, but the defendants (who are not indigents) will be assessed with all costs.

Judgment affirmed; the appellants to pay the costs.

APPENDIX B

Motions Made in the Trial Court

(February 3, 1963)

Testimony

Chester L. Jones,

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

Direct Examination

By Mr. Caldwell:

Q. And do you recall when you obtained the album? A. It was in the last part of February.

(Mr. Murrell) Your Honor, I am going to ask at this point that all of the testimony of this witness be taken subject to exception.

(Mr. Kandel) I make the same motion, Your Honor.

(The Court) Overruled.